



April 7, 2017

Ms. Marlene H. Dortch  
Secretary  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Notice of *Ex Parte* Meeting**

*Re: Connect America Fund, WC Docket 10-90; A National Broadband Plan for Our Future, GN Docket 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92; Federal-State Joint Board on Universal Service, CC Docket 96-45; Lifeline and Link-Up, WC Docket 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208*

Dear Ms. Dortch:

On behalf of the Ad Hoc Telecommunications Users Committee (“Ad Hoc”), the undersigned and Susan M. Gately, of SMG Consulting LLC, met on April 6, 2017, with Pamela Arluk, Robin Cohn, Victoria Goldberg, Lisa Hone, John Hunter, and Gil Strobel of the Pricing Policy Division.

During this meeting, we discussed Ad Hoc’s comments filed in the dockets captioned above on February 14, 2012 and its *ex parte* filings in those dockets on October 4, 2012 and March 30, 2015. Ad Hoc’s filings urge the Commission to restore the historic treatment of 8YY traffic for access charge purposes, pursuant to which carriers are required to apply the per minute charges for terminating traffic to the originating or “open” end of 8YY calls. The Commission itself raised this issue in its Further Notice of Proposed Rulemaking (“*FNPRM*”) for the dockets captioned above<sup>1</sup> and described in detail the competitive distortions at work on the “open” end of 8YY calls. As part of our discussion of these issues, we reviewed the information contained in the attached document.

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<sup>1</sup> Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) at para. 1303.



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We also discussed AT&T's recent observation that arbitrage and access stimulation schemes are increasingly shifting to 8YY service in the wake of the Commission's delayed reformation of originating access charges.<sup>2</sup> The Commission can reduce, if not eliminate, the incentives to use 8YY traffic for such schemes by treating the "open" or originating end of 8YY calls as the terminating end for access charge purposes, for all of the reasons identified by the Commission in the *FNPRM*.

Pursuant to the Commission's rules, this letter has been filed in the above referenced dockets. If you have any questions regarding this submission, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in cursive script that reads 'Colleen Boothby'.

Colleen Boothby  
Counsel

Ad Hoc Telecommunications Users Committee

cc: Pamela Arluk  
Robin Cohn  
Victoria Goldberg  
John Hunter  
Thomas Parisi

Attachment

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<sup>2</sup> See *Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket No. 16-363 (filed Sept. 30, 2016) at 11.



## **Correcting the 8YY Problem in Originating Access Charges**

# 8YY Originating Access Charges

- Open issue from November, 2011 ICC Transition *FNPRM*
- Access charges for originating end of 8YY (toll-free) minutes
- Ad Hoc's position in comments then (February, 2012) and now:  
FCC should continue its historic practice of treating originating 8YY minutes as terminating minutes
  - The treatment that had been in place for the previous 25 years
  - Same economic rationale applies today

# 8YY Originating Access Charges: The *FNPRM* was correct

- *FNPRM* accurately flagged the rationale for treating toll-free traffic differently from “sent paid” traffic:

1303. Relatedly, we also seek comment on the appropriate treatment of 8YY originated minutes. In the case of 8YY traffic, the role of the originating LEC is more akin to the traditional role of the terminating LEC in that the IXC carrying the 8YY traffic must use the access service of the LEC subscribed to by the calling party. Stated differently, in the case of 8YY traffic, because the calling party chooses the access provider but does not pay for the toll call, it has no incentive to select a provider with lower originating access rates. For this reason, we ask parties to address whether we should distinguish between originating access reform for 8YY traffic and originating access reform more generally.

# 8YY Originating Access Charges: The Past as Prologue, 1986

- **1986** - FCC recognized that the *originating* end of 8YY calls is tantamount to the *terminating* end of “sent paid” calls
  - Competitive forces negated: payor cannot pick provider
  - Same marketplace distortion as that identified in the *FNPRM*
- At that time, non-traffic-sensitive loop costs were recovered via two rate elements
  - Non-traffic-sensitive (monthly per line) *subscriber line charges* (“SLCs”), and
  - Traffic-sensitive (per minute) *carrier common line* (“CCL”) charges set substantially above cost
- FCC introduces “O/T split” –SLC increases reduced originating, not terminating, CCL rates to discourage “uneconomic bypass” of subsidy-laden CCL charges
- FCC classified toll-free originating minutes as terminating minutes
- Codified in the CCL portion of the rules (47 CFR Part 69.105)

# 8YY Originating Access Charges: Access Reform in 1997

- *Access Reform Order* reviews the state of play:
  - CCL charges had been drastically reduced and were being transitioned out for price caps carriers
  - Price caps regulation had been implemented
  - Uneconomic facilities bypass was no longer an issue
  - FCC flips the pricing of originating and terminating CCL charges, setting terminating rates below originating rates

# 8YY Originating Access Charges: Access Reform in 1997

- Commission again recognizes market power on the originating end of an 8YY call:

“In some cases, an IXC is unable to influence the end user's choice of access provider for originating access services because the end user on the terminating end is paying for the call. For example, charges for the "open end" originating access minutes for 800 or 888 services are paid by the recipient of the call. Consequently, the Commission has treated incumbent LEC originating "open end" minutes as terminating minutes for access charge purposes....

By continuing to treat "open end" originating minutes as terminating minutes for access charge purposes, we recognize that access customers have limited ability to influence the calling party's choice of access provider. Accordingly, access charges for these "open end" minutes will be governed by the requirements we adopt in this Order applicable to terminating access provided by incumbent LECs.”



# 8YY Originating Access Charges: CALLS Order in 2000

- The CALLS order completed the transition that eliminated CCL charges entirely for Price Caps LECs:
- Eliminated the only remaining price distinction between originating and terminating access minutes.
- Eliminated de facto the applicability of the rule requiring 8YY originating minutes to be treated the same as “sent paid” terminating minutes

# 8YY Originating Access Charges: Transformation Order in 2011

- The ICC Transformation Order reintroduced a rate differential between originating and terminating rates
  - But not through a revival of the old CCL rules
  - CCL rule is where the Commission had codified the treatment of 8YY originating access as terminating access
- Meanwhile, the competitive distortion affecting originating 8YY traffic has not changed
- Nor could it – it's the inevitable consequence of the 8YY “called party pays” mechanism
- FNPRM accurately described the issue and the solution
- When can the Commission adopt the solution?

# 8YY Originating Access Charges: Relevant Citations

## Relevant citations:

- 1986 Part 69 Order: WATS-Related and Other Amendments of Part 69 of the Commission's Rules, CC Docket No. 86-1, Report and Order, 51 FR 10839 at para. 53. (concluding that "open end" minutes are less subject to uneconomic bypass than originating MTS and MTS-like minutes, and therefore must be treated as terminating access minutes); codified at 47 C.F.R. § 69.105(b)(1)(iii)
- 1997 Access Reform Order: Access Charge Reform, CC Docket 96-262, Fourth Report and Order in CC Docket 94-1 and Second Report and Order in CC Docket 96-262, 12 FCC Rcd 16642, 62 FR 31939 at paras. 365 and 366
- 2011 ICC Transformation FNPRM: Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC No.11-161 (rel. November 18, 2011) ("FNPRM") at para. 1303